Europtics, Inc. d/b/a Pearle Express *and* Local 108, Retail, Wholesale and Department Store Union, U.F.C.W., AFL–CIO–CLC. Case 13–CA–41788

July 30, 2004

DECISION AND ORDER

BY MEMBERS SCHAUMBER, WALSH, AND MEISBURG

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on March 25, 2004, the General Counsel issued the complaint on April 30, 2004, against Europtics, Inc. d/b/a Pearle Express, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On June 10, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On June 15, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is filed within 14 days from service of the complaint, all the allegations in the complaint will be considered admitted.

The undisputed allegations in the motion for default judgment disclose that on May 20, 2004, the Region sent a letter to the Respondent, indicating that if an answer was not filed by May 27, a motion for default judgment would be filed. On May 25, the Region received a copy of an undated letter, attached to a copy of the Region's May 20, 2004 letter to the Respondent. The undated letter was addressed to Union President Charles Hall Jr., and stated that in light of recent negative economic events, the Respondent was objecting to several proposed modifications of the most recent "settlement agreement" (apparently bargaining proposals) between the Union and the Respondent. The letter did not refer to the complaint or its allegations in any way. The letter was signed by Isabella Gershengorin, the Respondent's president.

On May 27, the Region sent a second letter to the Respondent, stating that the documents sent to the Region did not appear to correspond to the allegations in the complaint, and informing the Respondent that its response did not constitute an answer under the Board's Rules, because it failed to specifically address each of the complaint allegations. The Respondent was given until close of business on June 3, 2004, to file an answer in which it addressed each complaint paragraph. The Respondent failed to file an answer.

The Board typically has shown leniency toward a pro se litigant's efforts to comply with procedural rules. See, e.g., *Mid-Wilshire Health Care Center*, 331 NLRB 1032, 1033 (2000) (pro se respondent's letter clearly denying complaint allegations accepted as an answer). Indeed, "[w]hen a pro se respondent's answer clearly denies the unfair labor practice allegations of the complaint, the Board will not grant summary judgment for the General Counsel even if the answer does not address all the factual allegations of the complaint." *American Gem Sprinkler Co.*, 316 NLRB 102, 103 fn. 5 (1995).

Here, however, although the letter from the Respondent to the Union appears to be an attempt to demonstrate that it had in fact bargained with the Union, it does not specifically deny the unfair labor practice allegations. There is no date on the letter, and therefore no indication of whether the Respondent is claiming that it has bargained with the Union since September 17, 2003, the date of the alleged unfair labor practice. In addition, the Respondent failed to address the substantive allegations of the complaint in any way. Further, the Respondent was apprised of the deficiencies in its response, and made no attempt to correct them. Accordingly, we find that the documents received by the Region from the Respondent on May 25, 2004, do not constitute a proper answer under Section 102.20 of the Board's Rules and Regulations because they fail to address any of the factual or legal allegations of the complaint, and are therefore legally insufficient under the Board's Rules. *American Gem Sprinkler Co.*, supra.[1]

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

[1] Member Meisburg notes that, although he views the problems set forth in the Respondent's letter with sympathy, the letter does not constitute a valid answer to the complaint nor does it set forth a legal defense. In the absence of any contest of the factual allegations that the Respondent refused to meet and bargain with the Union, the Board is left with no choice under the law but to grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Illinois corporation with an office and place of business in Naperville, Illinois, has been engaged in retail sales of eyeglasses and related products. During the calendar year preceding the issuance of the complaint, a representative period, the Respondent, in conducting its operations, derived gross revenues in excess of $500,000 and purchased and received goods valued in excess of $50,000 directly from suppliers located outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 108, Retail, Wholesale and Department Store Union, U.F.C.W., AFL-CIO-CLC, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all materials times Isabella Gershengorin held the position of the Respondent's president, and has been a supervisor of the Respondent with the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees employed by the Employer at its facility currently located at 680 S. State Street, Route 59, Naperville, Illinois, but excluding the store manager, assistant manager, office employees, and guards, professional employees and supervisors as defined in the Act.

Since at least January 1, 1998, the Union has been the exclusive collective-bargaining representative of the unit.

At all material times since at least January 1, 1998, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive collective-bargaining representative of the unit.

Since about September 17, 2003 and at various times thereafter, the Union, by letters and telephone calls from Union President Charles N. Hall Jr., requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit. Since September 17, 2003, and continuing to date, the Respondent has failed and refused to meet and bargain with the Union as the exclusive collective-bargaining representative of the unit.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing to bargain collectively and in good faith with the exclusive bargaining representative of its employees since September 17, 2003, we shall order it to bargain with the Union with respect to wages, hours, and other terms and conditions of employment of the unit employees and, if an understanding is reached, embody the understanding in a signed agreement.

ORDER

The National Labor Relations Board orders that the Respondent, Europtics, Inc. d/b/a Pearle Express, Naperville, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Local 108, Retail, Wholesale and Department Store Union, U.F.C.W., AFL–CIO–CLC, as the exclusive collective-bargaining representative of the employees in the following unit:

> All employees employed by the Employer at its facility currently located at 680 S. State Street, Route 59, Naperville, Illinois, but excluding the store manager, assistant manager, office employees, and guards, professional employees and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the unit employees concerning their terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Within 14 days after service by the Region, post at its facility in Naperville, Illinois, copies of the attached

notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 17, 2003.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 30, 2004

Peter C. Schaumber, Member

Dennis P. Walsh, Member

Ronald Meisburg, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain with Local 108, Retail, Wholesale and Department Store Union, U.F.C.W., AFL–CIO–CLC, as the exclusive collective-bargaining representative of our employees in the following unit:

All employees employed by us at our facility currently located at 680 S. State Street, Route 59, Naperville, Illinois, but excluding the store manager, assistant manager, office employees, and guards, professional employees and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive representative of our unit employees concerning their terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

EUROPTICS, INC. D/B/A PEARLE EXPRESS

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."